

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-005360

08/27/2007

HONORABLE PETER SWANN

CLERK OF THE COURT
D. Monroe
Deputy

LUKE AUBERT, et al.

JACK LEVINE

v.

VICTOR ZACHARY MARTIN

ROSA DERIEUX

R JOE BYER

MINUTE ENTRY

10:03 a.m. This is the time set for Telephonic Status Conference Re: Trial Setting. Plaintiffs, Luke Aubert and Karen Aubert, are telephonically represented by counsel, Jack Levine. Defendant, Victor Zachary Martin, is represented by counsel, Shelley Pysell, on behalf of Rosa Devieux.

Court Reporter, Judie Bryant, is present.

The Court has received and reviewed Defendant's Status Report to the Court, which reflects that Defendant is requesting a jury trial.

Discussion is held regarding Plaintiff's continuing medical treatment and scheduling.

IT IS ORDERED setting a Jury Trial on **December 4, 2007, at 9:30 a.m. (time allotted: 2 days)** before:

HONORABLE PETER B. SWANN
MARICOPA COUNTY SUPERIOR COURT

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OLD COURT HOUSE
125 W. WASHINGTON
2nd FLOOR, COURTROOM 202
PHOENIX, AZ 85003
602-506-7959 TEL
602-372-8545 FAX

THIS IS A FIRM TRIAL SETTING.

10:10 a.m. Matter concludes.

LATER:

IT IS FURTHER ORDERED setting a Pretrial Management Conference on **November 20, 2007 at 8:30 a.m. (time allotted: 45 minutes)**. The Pretrial Management Conference shall be governed by the Pretrial Management Orders issued this date.

No information disclosed after the dates contained in the order may be used at the trial absent court order on motion and affidavit.

IT IS FURTHER ORDERED that should any discovery disputes arise, prior to filing discovery motions, counsel shall MEET AND CONFER pursuant to Rule 37, then telephonically contact the court to set up a telephonic conference before any motions are filed.

PRETRIAL MANAGEMENT ORDERS

IT IS ORDERED that the Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), A.R.Civ.P., is due in this division **by 5:00 p.m., five judicial days before the Pretrial Management Conference set for November 20, 2007 at 8:30 a.m.**, as scheduled in the trial setting order.

IT IS FURTHER ORDERED with the JPTS, counsel shall deliver to this division, copies of the following:

A. **A jointly completed time and witness estimate list.** The Court will use the list to predict the length of the trial for the jurors and to direct counsel to follow the trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.

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B. A joint set of agreed-upon preliminary and final jury instructions.

This does not include Preliminary Civil RAJI or Standard Civil RAJI 1 – 15, which the Court will give without request.

C. Separate sets of requested instructions that have not been agreed upon.

Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993), and the RAJI Civil Statement of Purpose and Approach before preparing the request for non-RAJI instructions.

D. Proposed Findings of Fact and Conclusions of Law, if a request has been

or will be filed Pursuant to Rule 52. If no proposed Findings of Fact and Conclusions of Law is received, the request shall be deemed waived.

E. Proposed voir dire questions that the Court will give.

F. In jury trial cases the parties shall jointly prepare a brief summary of the

case which the Court will read to the jury at the commencement of voir dire.

G. Juror notebooks. The Court encourages use of juror notebooks in

appropriate cases. Stipulating the contents in evidence is necessary. Key exhibits may be included, along with diagrams, photographs, timelines, non-argumentative summaries of positions of liability and damages and other information helpful to jurors.

H. Counsel are to identify in/with the JPTS all deposition or other transcribed

testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony, and the reasons for such objections, are also to be set forth.

MOTIONS IN LIMINE

Motions in limine shall be filed only in accordance with Rule 7.2, Ariz. R. Civ. P.

Motions in limine shall be filed 30 days before the PTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972). A written response to a motion in limine may be filed no later than ten (10) days thereafter. The Court will rule on the motions in limine without oral argument. If the Court wishes to hear argument, the argument will be heard at the PTMC. No replies shall be filed.

Unless prior leave of the Court is obtained for good cause shown, no party may file more than five motions in limine, including all subparts.

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MARKING EXHIBITS

At least five judicial days before the PTMC, the trial lawyers or their knowledgeable assistants shall appear in this division to present all exhibits. The exhibits will be marked serially as they are listed in the LIST OF EXHIBITS which will be prepared by counsel. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly marked to correspond with the list provided. ***Counsel are directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.*** Counsel should not reserve exhibit numbers for all Defendant's exhibits, all Plaintiff's exhibits, miscellaneous demonstrative exhibits, and the like. Counsel shall also present original depositions for filing at that time. Written stipulations to admit specified exhibits in evidence are encouraged.

Please note that the Court utilizes the Exhibit Tracking System (ETS) for the marking of exhibits. The exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendant's exhibits numbering shall start at the next number following the last of Plaintiff's exhibits. (For example, Plaintiff submits 82 exhibits, which are marked Exhibit 1 through 82. Defendant submits 63 exhibits, which are marked 83 through 145). Please do not combine the parties' exhibits. Each side's exhibits must be submitted separately and in numerical order.

The Court will hear and rule upon objections at the PTMC. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the Pretrial Management Conference or will be deemed to have been waived.

IT IS FURTHER ORDERED that counsel, at the PTMC, shall be prepared to discuss:

- A. Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and voir dire.
- D. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of videotaped depositions.

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Narrative summaries with brief excerpts of deposition question and answer testimony are preferred at trial rather than the reading in of pages of testimony.

- E. Use of "short trial" or summary jury trial.
- F. Any special scheduling or equipment issues.
- G. Status of settlement of the case.

COUNSEL WHO WILL BE THE TRIAL LAWYERS ON THE CASE ARE
REQUIRED TO ATTEND THE PRETRIAL MANAGEMENT CONFERENCE.

FAILURE OF TRIAL COUNSEL TO ATTEND THE PRETRIAL MANAGEMENT
CONFERENCE MAY RESULT IN PERSONAL SANCTIONS.

SETTLEMENT

If the case is set for a jury trial one-day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before trial.

ATTACHED: Time Estimates Form:

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CAUSE NUMBER _____
CASE CAPTION _____
PLAINTIFF'S COUNSEL _____
DEFENDANT'S COUNSEL _____

(NOTE: Add additional lines as needed for additional parties and or witnesses.)

TIME ESTIMATES FOR TRIAL

Opening Statement and Closing Argument

PLAINTIFF'S OPENING STATEMENT	
DEFENDANT'S OPENING	
PLAINTIFF'S CLOSING	
DEFENDANT'S CLOSING	
PLAINTIFF'S REBUTTAL	

Estimate of Time for Witness Examination

PLAINTIFF'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

Estimate of Time for Witness Examination

DEFENDANT'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

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GUIDELINES FOR COUNSEL WHEN PREPARING EXHIBIT FOR USE IN COURT

Exhibits are due to the Court five business days prior to the pretrial management conference.

Counsel are to provide a workable list of exhibits in a format (email or 3 ½” disk) that the clerk can access to transfer information to the court’s exhibit information system. The list should include a description of each exhibit. (See blank sample of an exhibit table below as a reference.) Do not put numbers on the exhibits.

Exhibit Description Information:

The descriptions should be verifiable when viewing the exhibit. Counsel are encouraged to use separating sheets or a title page on each exhibit.

Examples of a correct description:

Journal Pages
Photograph
List of dates

Examples of incorrect description:

Pages from John Jones’ journal (1)
4 x 6 photograph of victim’s car (2)
List of dates of meetings between John
and Tony (3)

(1) If it cannot be verified that the journal is John Jones' that information should not be included in the description.

(2) The size of a photograph should not be listed. The photograph should not be described.

(3) Unless the document is labeled as “meeting dates between John and Tony” that information should not be included.

No bates stamp references or number of pages in documents should be used.

If counsel are submitting large charts, blow-ups or maps, please include a small version which can be marked as the exhibit and can go into the jury if in evidence. The blow-ups, charts and/or maps can be used as demonstrative but will not be marked as exhibits and will be returned to counsel.

Please do not submit exhibits in notebooks.

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For additional assistance in preparation of exhibits contact the courtroom clerk at 602-506-8946

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CASE CAPTION:
TIME ESTIMATES

The foregoing are based on the best estimates of counsel of the time reasonably needed to complete the necessary examination of the witnesses listed.

Counsel for Plaintiff

Counsel for Defendant
